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No. 94-575

In The

Supreme Court of the United States

October Term, 1994

WILLIAM CHAPLIN,

Petitioner,

v.

JANINE ANNE BAKER,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Minnesota

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Respondent strongly disagrees with the Petitioner's statement of the issues presented by this case. She believes the questions actually presented are:

1) Whether the contours of the law concerning a police officer's use of excessive force were clearly established when Sgt. Chaplin hit Ms. Baker with his riot baton.

2) Whether the presence of disputed predicate facts necessary for applying the objective reasonableness standard for qualified immunity requires denial of summary judgment.

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STATEMENT OF CASE

On September 27, 1990, Sgt. William Chaplin smashed Janine Anne Baker in the middle of her chest, just over her heart, with his riot baton. The incident was recorded by a local television news crew.[1] While the parties agree that Chaplin hit Baker, significant facts underlying this lawsuit are disputed by the parties, including the facts concerning the circumstances that existed at the time he hit her. Petitioner's version of the events inaccurately summarizes the incident and fails to identify the conflicting versions of the material facts of this case.

President George Bush came to Minneapolis on September 27, 1990 to speak at a political fund-raiser. A number of Twin Cities social action groups organized a rally outside the Hyatt Hotel where the fund-raiser was being held to provide a forum where the public could express opposition to the President's policies. Pet. App. 3a.[2]

Janine (Annie) Baker attended the rally to express her opposition to the President's failure to ratify the United Nations Convention on the Rights of Children. She used humor to convey her message by dressing in a business suit and wearing a mask of President Bush's face. Resp. App. 1a, 2a.

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[1] The videotape is included as Respondent's Appendix 1a. A copy of the videotape has been lodged separately with the Clerk of the Supreme Court of the United States.

[2] References to "Pet. App." refer to Petitioner's Appendix attached to his petition. References to "Resp. App." refer to Respondent's Appendix attached to this Brief in Opposition.

Contrary to the Petitioner's version of the facts, Baker did not demonstrate in the streets until the police moved her back behind barriers. Baker and the other persons attending the rally initially gathered in front of the hotel for speeches. They were allowed to use Nicollet Avenue, which had been blocked off by the police for this purpose. When the speeches ended, the group moved peacefully around the corner to the Grant Street side of the building. Baker remained behind the police barriers and stayed within the area the police had designated for them at all times. Pet. App. 3a

Baker and other persons attending the rally stood on the Nicollet Mall during the speeches and later walked down the Mall to get to Grant Street. (The WCCO videotape shows Baker dancing around a drummer.) This occurred on the Nicollet Mall when the crowd was walking to Grant Street. Once the crowd reached Grant Street, Baker and the other participants remained on the sidewalk, behind the police barricades. Resp. App. 1a, 3a, 4a.

Chaplin also misstates the facts in the record when he argues that he was defending the life of the President. It is undisputed that President Bush was not in the area of the demonstration when Chaplin hit Baker. President Bush had left the hotel earlier by another exit and was never in the area where Baker and the others had gathered. Resp. App. 6a, 9a.

Baker stood in the front of the crowd on the corner of LaSalle Avenue and Grant Street in the area the police had designated for demonstrators to stand. There were wooden police barricades directly in front of her (along Grant Street) and a second set of wooden barricades on

her left (along LaSalle Avenue). In addition, there were at least two police vehicles parked directly adjacent to the LaSalle Avenue barricade, forming a second barrier between the demonstrators and the street. Pet. App. 3a, Resp. App. 1a.

A line of Minneapolis police officers holding riot batons stood immediately behind the barricades. Behind this first line of police officers there were Secret Service Agents, other security personnel, and more Minneapolis Police Officers, including supervisors. Among those supervisors was Petitioner Chaplin. Resp. App. 1a.

During the time the demonstrators were behind the Grant Street barriers, there was only one incident in which any demonstrator attempted to cross the police line and go into the street. This incident took place in the middle of the block some distance away from where Baker stood and occurred several minutes before Chaplin hit Baker. Resp. App. 1a, 4a. The videotape shows a man momentarily break through the police line. Chaplin and other officers quickly pushed him back behind the lines holding their riot batons horizontally to push him. None of the officers used a thrust maneuver to strike him. Resp. App. 1a. This person had no connection with Ms. Baker.

Later, as Baker stood at the corner holding her sign, the Grant Street barricade in front of her was jostled by the crowd and fell over. Minneapolis police officers picked up the barricade and moved the crowd back, away from the curb. Baker and the others in the crowd backed up to comply with the police officers' directions, even though there was little room for them to move backwards. Pet. App. 3a, Resp. App. 1a, 5a.

As Baker tried to move backwards she used the LaSalle Avenue barricade to balance herself. At the same time others in the crowd were pushed against it causing the barricade to fall over. Pet. App. 3a and 4a, Resp. App. 1a. Neither Baker nor the other demonstrators attempted to move past the police line and into the street when the barricade fell over. The crowd was neither agitated nor out of control. They complied with the directions of the police officers and were moving backwards, away from the barricade, so the police could set it up again. Resp. App. 1a, 5a.

At this time, Chaplin was walking behind the first line of officers, holding his riot baton. When the barricade fell over he instantly singled out Baker and lunged forward, past the front line officers. He swung his riot stick like a battering ram with both hands, and with full force brutally jabbed Baker in the middle of the chest. Baker was standing still when Chaplin hit her. Resp. App. 1a.

Chaplin did not say a word to Baker before he attacked her. He did not give her any directions or warning. Baker did not attack or threaten Chaplin. Chaplin did not arrest Baker, or make any attempt to do so. Instead, as the videotape shows, he turned his back on Baker after the blow and put on a pair of black leather gloves. Resp. App. 1a.

Chaplin's blow struck Baker in the middle of her chest, severely bruising her sternum. The sternum is located directly over the heart. Pet. App. 4a, Resp. App. 1a. Baker suffered serious physical and emotional injuries as a result of Chaplin's attack. Resp. App. 6a, 7a.[3]

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[3] For reasons of economy, Respondent has omitted the exhibits attached to and referred to in her affidavit.

The Minneapolis Police Department Policy and Procedure Manual, as well as training materials used by the Department, contain explicit instructions regarding the use of riot batons. The policy manual specifically instructs police officers:

> 5-304 *BATON OR RIOT TRUNCHEON*
>
> Officers are expected to be aware of the fact that a blow to certain parts of the human body can cause immediate death, or grievous injury that can lead to a permanent physical or mental incapacity or eventual death. Areas susceptable (sic) to death or possible severe injury are the . . . chest (in the vicinity of the heart). . . . Unless deadly force is justified, officers should avoid striking any of the above described areas.

Pet. App. 5a, 6a. The Manual further provides that police officers may use deadly force "only when necessary . . . to protect themselves or others from apparent death or great bodily harm." Pet. App. 5a, 9a.

Training materials used by the Minneapolis Police Department to instruct officers in the proper use of the riot baton contain the same caution. Pet. App. 5a, 6a. Sgt. Chaplin was an instructor in the use of the riot baton and therefore familiar with the training materials and the policy manual provisions concerning the use of the riot baton. Pet. App. 45a.

Baker filed a complaint regarding Chaplin's conduct with the Internal Affairs Unit of the Minneapolis Police Department. The Petitioner has misrepresented the outcome of her complaint to this Court. The complaint was sustained by the Department. The Petitioner's statement that the Internal Affairs Unit dismissed the complaint is

inaccurate and misleading. While an Internal Affairs Unit investigator recommended that no action be taken against Chaplin, the complaint was never dismissed. Police Chief John Laux rejected this recommendation, upheld the complaint and suspended Chaplin. Resp. App. 10a.[4]

Chaplin filed a motion with the trial court seeking summary judgment on his defense of qualified immunity. The motion was denied. The Minnesota Court of Appeals and the Minnesota Supreme Court, the state court of last resort in Minnesota, both unanimoulsy affirmed the decision of the trial court.

REASONS FOR DENYING CERTIORARI

Review by certiorari should only be granted where there are "special and significant reasons" for reviewing a decision made by a lower court. The Rules of this Court provide the standards for determining whether a request for certiorari should be granted. A petition for certiorari should only be granted:

> (b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of the decision of another state court of last resort or of a United States court of appeals.

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[4] The recommendation of the IAU investigating officer is not surprising in light of the poor record of the Minneapolis Police Department Internal Affairs Unit concerning investigation and discipline of Minneapolis police officers. *Mische v. Sauro*, U.S. District Court, District of Minnesota, File No. CV 3-94-217.

> (c) When a state court . . . has decided a federal question in a way in conflict with applicable decisions of this Court.

Rules of the Supreme Court of the United States, Rule 10.1.

The law of qualified immunity contains a two part test: Whether the law concerning the police officers actions was "clearly established" and whether an objectively reasonable police officer would have known his/her conduct was constitutionally impermissible. *Anderson v. Creighton*, 483 U.S. 635 (1987); *Harlow v. Fitzgerald*, 477 U.S. 317 (1982). The Minnesota Supreme Court applied both prongs of the *Anderson* test and concluded that granting summary judgment was not warranted. It determined that the law concerning the use of force by police officers was clearly established. It also determined that material predicate facts necessary to decide the objective reasonableness standard were in dispute.

The Petitioner now argues that both aspects of its decision are inconsistent with the decisions of the Supreme Court of the United States and are also in conflict with decisions of the U.S. courts of appeal. The following sections of this brief will demonstrate that the Petitioner is incorrect. The decision of the Minnesota Supreme Court is consistent with the decisions of this Court and the courts of appeal concerning both the clearly established law and objective reasonableness elements of the qualified immunity standard.

THE LAW CONCERNING THE USE OF FORCE WAS WELL ESTABLISHED.

The first element of the qualified immunity standard focuses on the constitutional right the plaintiff claims was violated. This Court has held that the right which the plaintiff seeks to enforce must have been "clearly established" at the time the defendant acted. *Anderson v. Creighton*, 483 U.S. 635 (1987). In this case, Baker contends that Chaplin used excessive force when he hit her with his riot baton.

The Minnesota Supreme Court determined that the law concerning excessive force was clearly established at the time Chaplin acted, relying on the decisions of the U.S. Supreme Court in *Graham v. Connor*, 490 U.S. 380 (1989) and *Tennessee v. Garner*, 471 U.S. 1 (1985). Pet. App. 3a, 10a. Contrary to the Petitioner's argument, the Court did not base its decision on the general language of the Fourth Amendment. It relied on the ample development of the law concerning the use of excessive force, including the decisions of the Supreme Court of the United States (*Graham* and *Garner*), as well as the decisions of the U.S. courts of appeal. Pet. App. 7a-11a. Its decision on this issue is consistent with the decisions of this Court. In addition it is consistent with the decisions of the U.S. courts of appeal. *Posr v. Doherty*, 944 F.2d 91 (2nd Cir. 1991); *Calamia v. City of New York*, 879 F.2d 1025 (2nd Cir. 1989); *Spann v. Rainey*, 987 F.2d 1110 (5th Cir. 1993); *Jackson v. Hoylman*, 933 F. 2d 401 (6th Cir. 1991); *Holt v. Artis*, 843 F.2d 242 (6th Cir. 1988); *McDonald v. Haskins*, 966 F.2d 292 (7th Cir. 1992); *Gainor v. Rogers*, 973 F.2d 1379 (8th Cir. 1992); *Williams-El v. Johnson*, 873 F.2d 224 (8th Cir. 1989); *Patzner v. Burkett*, 729 F.2d 1363 (8th Cir. 1985);

Palmer v. Sanderson, 9 F.3d 1433 (9th Cir. 1993); *Street v. Parham*, 939 F.2d 537 (10th Cir. 1991); *Dixon v. Richer*, 922 F. 2d 1456 (10th Cir. 1991).

Petitioner contends that the decision of the Minnesota Court of Appeals is in conflict with two decisions of the U.S. courts of appeal: *Barts v. Joyner*, 865 F.2d 1187 (11th Cir. 1989), and *Rice v. Burks*, 999 F.2d 1172 (1993). However, this attempt to create a conflict is mistaken. One of the decisions (*Barts*) did not involve the use of excessive force. The other (*Rice*) did not turn on whether the law concerning the use of excessive force was clearly established.

The *Barts* case did not involve the issue of excessive force. Instead, *Barts* involved a claim that the defendant police officer had violated clearly established constitutional rights when he took Ms. Barts to the police station (with her consent) for further questioning concerning a murder which she claimed to have witnessed. At the station, Ms. Barts confessed to the murder after three hours of questioning. The Eleventh Circuit considered whether, at the time of the incident, the law was clearly established that it was an unconstitutional seizure in violation of the Fourth Amendment for a police officer to take a person to a police station with her consent for further questioning under the exceptional circumstances present in the *Barts* case. Ms. Barts made no claim that the defendants had used excessive force.

The Eleventh Circuit's decision that the law was not clearly established was based upon its review of the state of the law concerning the Fourth Amendment's prohibition against unreasonable seizures as it existed at the time

of the incident. It held that the law concerning the type of seizure made by the defendant was not clearly developed because some courts had specifically found seizures similar to the defendant's seizure of Ms. Barts were constitutionally permissible. *Barts v. Joyner*, 865 F.2d 1187, 1191-93 (11th Cir. 1989). The Court did not even address the state of the law concerning the use of excessive force, since that issue was not part of the case.

In the present case, Petitioner has failed to identify any developments or changes in the law concerning the use of excessive force. The *Graham* fact-based standard of reasonableness reflects the law as it existed when Chaplin hit Baker.

The Seventh Circuit's decision in *Rice v. Burks* does not demonstrate the kind of significant conflict with the Minnesota Supreme Court's decision to justify granting certiorari for two reasons. First, the decision in *Rice* does not turn on whether the law concerning the use of excessive force was clearly established. Secondly, other decisions of the Seventh Circuit have held that the contours of the law concerning excessive force has been clearly established.

The *Rice* decision involved a claim by a fleeing suspect that he had been struck in the back by a police officer. The plaintiff failed to produce any evidence of what had been used to strike him or what circumstances existed at the time he was hit. However, it was undisputed that he was fleeing from the officers. Despite the dicta used by the Court concerning the state of the law regarding the use of force, the court did not identify any new developments or changes in the law.

The real thrust of the Court's decision does not focus on the state of the law. Instead it focuses on the fact that the plaintiff failed to produce sufficient evidence to show that the defendant police officers' use of force was not objectively reasonable, given that he was attempting to escape at the time. If the Court's decision had been based on its determination that the law concerning the use of excessive force was not clearly established, there would have been no need to address the objective reasonableness prong of the *Anderson* qualified immunity standard.

In addition, the dicta in the *Rice* decision does not reflect the position of the Seventh Circuit on the question whether the law of excessive force has been clearly established. Other decisions of the Seventh Circuit Court of Appeals make it clear that it finds the *Graham* standard for the use of excessive force is clearly established law. See, e.g.: *Estate of Starks v. Enyart*, 5 F.3d 230 (7th Cir. 1993); *Ellis v. Wyndala*, 999 F.2d 243 (7th Cir. 1993); *McDonald v. Haskins*, 966 F.2d 292 (7th Cir. 1992).

In his attempt to convince this Court that the Minnesota Supreme Court's decision is in conflict with the decision of one or more of the U.S. courts of appeal, Petitioner argues that the Minnesota Supreme Court's decision is erroneous because the Court failed to identify any other case involving a police officer who was providing security during a Presidential visit. Petitioner commits the error of overly particularizing the constitutional right at issue which this Court has cautioned against.

The "clearly established law" element of *Anderson v. Creighton* does not require exact factual identity between

the present case and previously decided cases. As this Court has stated:

> [T]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful. . . .

Anderson v. Creighton, 483 U.S. 635, 640 (1987).

The rule was accurately explained by the Court of Appeals for the D.C. Circuit in *Hobson v. Wilson*, 737 F.2d 1 (D.C. Cir. 1984):

> The right at issue can be defined neither so broadly as to parrot the language in the Bill of Rights nor so narrowly as to require that there can be no distinguishing facts between the instant case and existing precedent. The former reading of *Harlow* would of course undermine the premise of qualified immunity that government actors reasonably should have known that their conduct is problematic. The later reading on the other hand, would unquestionably turn qualified into absolute immunity by requiring immunity in any new fact situation.

Hobson v. Wilson, 737 F.2d 1, 26 (D.C. Cir. 1984). Chaplin's argument commits the later error.

The fact that there have not been any reported cases in which a plaintiff claimed that a police officer used excessive force while involved in providing crowd control during a presidential visit is not significant for two reasons. First, there are no facts in the record supporting

Chaplin's claim that the President was in the area or even that he was about to enter the area. Secondly, he fails to explain what there is about crowd control when the President happens to be in town that would change the Constitutional standard governing the use of force. *Graham v. Connor* would still provide the applicable legal standard governing his conduct.

MATERIAL FACT DISPUTES CONCERNING THE PREDICATE FACTS NECESSARY TO APPLY THE OBJECTIVE REASONABLENESS STANDARD FOR QUALIFIED IMMUNITY PREVENTS SUMMARY JUDGMENT.

The Petitioner's second argument in support of his petition for certiorari is that the Minnesota Supreme Court erroneously applied the "objective reasonableness" prong of the *Anderson* qualified immunity test. His argument seriously misstates the basis on which the Minnesota Supreme Court reached its ruling and ignores the fact that the court's analysis is consistent with the prior decisions of this Court and with the decisions of the U.S. courts of appeal which have taken up this issue.

The Minnesota Supreme Court ruled that Chaplin was not entitled to summary judgment on the issue of qualified immunity because material predicate facts necessary to resolve the issue of qualified immunity were in dispute. It correctly applied this Court's holding in *Anderson v. Creighton* by applying the objective reasonableness standard. Pet. App. 11a-15a. It used an objective, rather than a subjective standard, and did not consider Chaplin's state of mind. Pet. App. 12a. It judged his actions "from the perspective of a reasonable officer

on the scene, rather than with the perspective of 20/20 vision of hindsight". Pet. App. 11a. It considered all the facts and surrounding circumstances using an objective standard. Pet. App. 12a.

After completing its analysis, the Minnesota Supreme Court found that significant material facts were in dispute concerning the circumstances that existed at the time Chaplin hit Baker and the specific actions Chaplin took. The Minnesota Supreme Court specifically identified a number of disputed fact issues that prevented summary judgment on the qualified immunity issue, including Baker's actions prior to being hit by Chaplin, the location of her injury, the nature of the force used by Chaplin App. 4a-5a; 14a. The Court concluded:

> . . . the legal question of the reasonableness of the officer's actions turns on the determination of such predicate facts. [Citation omitted.] This court cannot decide as a matter of law whether the officer's actions in this case were reasonable without a finding of fact as to what those actions and the surrounding facts and circumstances were.

Pet. App. 13a

The conclusion of the Minnesota Supreme Court that disputed predicate facts prevents summary judgment on qualified immunity is consistent with the decisions of the Supreme Court of the United States. This Court has held that standard summary judgment principles apply in cases involving the issue of qualified immunity. *Anderson v. Creighton*, 483 U.S. 635, 646 n. 6 (1987). See also, *Harlow v. Fitzgerald*, 457 U.S. 800, 816 n.26 (1982).

There is no conflict among the U.S. courts of appeal on this issue, or between the decision of the Minnesota Supreme Court and the U.S. courts of appeal. The Minnesota Supreme Court followed the ruling of the 8th Circuit in *Gainor v. Rogers*, which also held that disputed material facts necessary to determine the issue of qualified immunity requires denial of summary judgment on that issue. *Gainor v. Rogers*, 473 F.2d 1379 (8th Cir. 1992). The same result has been reached by other U.S. courts of appeal. *Lampkin v. City of Nacogdoches*, 7 F.3d 430 (5th Cir. 1993), *cert den. Vanocher v. Lampkin*, 114 S. Ct. 1400 (1994). The Petitioner did not cite a single U.S. court of appeal which has taken a conflicting position.

Chaplin also incorrectly represents to this court that the Minnesota Supreme Court decided that application of the objective reasonableness standard is a jury issue. This seriously misstates the decision. The Minnesota Supreme Court explicitly held that the issue is a legal issue that must be decided by the court. Pet. App. 6a, 15a.

When the Petitioner cites that portion of the decision which states that "a jury could conclude . . . that no objectively reasonable police officer would find Chaplin's use of force lawful", he does not provide this Court with a complete and accurate picture of the lower court's decision. He fails to advise this Court that the cited language appears in the section of the decision in which the Minnesota Supreme Court analyzed whether disputed material fact issues exist concerning the predicate facts necessary to determine the question of qualified immunity. The reference to what a jury could conclude is simply a recognition that Baker met her burden of production by producing sufficient evidence to demonstrate

that material fact issues exist which was established by this Court in *Celotex v. Catrett*, 477 U.S. 317, 323-24 (1986) and *Matsushita Electrical Industry Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585-6 (1986).

The Petitioner erroneously states that the Minnesota Supreme Court ruled that Chaplin was not entitled to qualified immunity. It simply affirmed the trial court's denial of summary judgment on this issue. It explicitly held that when the underlying fact issues necessary to resolve Chaplin's entitlement to qualified immunity had been resolved, the trial court "could make another *legal* determination regarding the issue of the reasonableness of Chaplin's actions, and may find that Chaplin does enjoy qualified immunity from liability." (emphasis in original) App. 15a, fn 10. Its decision correctly reflects the law as established by this Court.

CONCLUSION

The Petitioner has failed to establish any adequate basis for this Court to grant certiorari to review the decision of the Minnesota Supreme Court. The decision is correct and is consistent with the decisions of the Supreme Court of the United States and of the U.S. courts of appeal which have addressed the same issues presented by the present case. Petitioner has failed to show that any significant conflict exists between the decision of the Minnesota Supreme Court and the decisions of the U.S. courts of appeal which have considered the doctrine of qualified immunity in excessive force cases.

Sgt. Chaplin's Petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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November 1994

APPENDIX

WCCO Videotape – I-Team Report of Incident on September 27, 1990

The videotape is included in the record in the Minnesota Supreme Court. A copy of the videotape has been lodged separately with the Clerk of the Supreme Court of the United States.

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Type of Case: Other Civil
Court File No.: 91-22065

Janine Anne Baker,

Plaintiff,

vs.

William Chaplin, et al,

Defendants.

AFFIDAVIT OF JANINE (ANNIE) BAKER

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

Janine (Annie) Baker, being first duly sworn, on oath states:

1. I am the Plaintiff in the above-entitled action.

2. I have reviewed the affidavits, exhibits, and memorandum submitted by Defendant Chaplin in support of his Motion for Summary Judgment.

3. I was present during a demonstration held on September 27, 1990, at the Hyatt Hotel in Minneapolis. I was wearing a costume and a President Bush mask during the demonstration. The purpose of the costume was to attract the President's attention by using humor.

4. The demonstration began across the Nicollet Mall from the Hyatt Hotel with speeches by various people.

After a period of time, the demonstration moved down the Nicollet Mall and around the corner to Grant Street between the Nicollet Mall and LaSalle. I walked with other people who were part of the demonstration down Nicollet Mall and crossed Grant Street. I then walked down the sidewalk on Grant. Police barricades had been set up in the street along the Grant Street sidewalk. I stayed behind the barricades in the area the police had designated for the demonstration. The other demonstrators did so as well.

5. I have reviewed the WCCO I-Team videotape which reported on the incident in which Sgt. Chaplin hit me in the chest.

6. At one point, the videotape shows me, in my George Bush costume, holding a sign and dancing around a person playing a drum. This occurred when I was walking on the Nicollet Mall with the other demonstrators from the site across from the main entrance to the hotel where the speeches were held to the Grant Street sidewalk. The videotape shows me walking on the Nicollet Mall, moving towards Grant Street. Police were not prohibiting demonstrators from using the Nicollet Mall. The mall had been blocked against use by regular traffic by police during the demonstration.

7. After I crossed Grant Street and reached the sidewalk, I remained behind the police barricade in the area the police had designated for the demonstration.

8. The portion of the videotape showing me in the Nicollet Mall occurred more than 30 minutes prior to the time that Sgt. Chaplin hit me.

9. Contrary to the claim of Defendant Chaplin in his memorandum and the affidavit submitted in support of his motion, I never attempted to go past the police barricades and into the street. At all times after the demonstration moved to the Grant Street sidewalk area, I remained behind the police barricades. After crossing Grant Street, I moved down the sidewalk to the corner of Grant and LaSalle. I stood at the corner holding my sign, behind the barricades.

10. Prior to the time Sgt. Chaplin hit me, there was only one time that any demonstrators crossed the police barricade prior to the time that I was hit. This was when a man from the Up and Out of Poverty group (who I now know was Mark Thesius) ran past the barricade and into Grant Street before police officers pushed him back behind the police line. This incident is shown on the WCCO I-Team videotape. I could see it from where I was standing, but I was not a part of it. There was at least one police car between where I was standing and where the incident occurred.

11. Shortly after Mark Thesius ran past the police barricade and was pushed back by the police, the barricade in front of me fell over. I did not push the barricade over.

12. As the WCCO videotape shows, a police officer was standing in front of me and began setting up the fallen barricade. The police officer directed me and other demonstrators to move back, and we complied with the orders of the police. I did not move forward and made no attempt to cross the barricade and move into Grant Street. I did not interfere with the police officer's efforts to set

up the fallen barricade. No one tried to move into Grant Street when the barricade in front of us fell over.

13. I was standing at a corner where two barricades met. One barricade was set up along Grant Street, the other was set up along LaSalle Avenue (to my left).

14. Next to the LaSalle Avenue Barricade (in between the barricade and LaSalle) a row of police cars and vans was parked. These cars and vans are visible in the WCCO videotape. The police cars and vans blocked demonstrators from going into LaSalle Avenue and formed a second barricade keeping demonstrators behind the wooden barricades at the corner of Grant and LaSalle.

15. As the Grant Street barricade was being re-erected, I was moving backwards in compliance with the directions of the police officers who were setting up the barricade again. I was being pushed by them towards the LaSalle Avenue barricade, and I put my hand on that barricade to steady myself. Other demonstrators were doing the same thing. I felt the LaSalle Avenue barricade start to tip over and it fell shortly afterward.

16. As the videotape shows, when the barricade fell over, I was standing still. I was not "surging" forward. I did not move to cross either the fallen LaSalle Avenue barricade or the Grant Street barricade, as the videotape shows. I did not try to go into either street. Also, none of the demonstrators who were standing near me made any attempt to move across the barricades and into the streets.

17. Prior to the time Sgt. Chaplin struck me, the crowd was not agitated or out of control. Demonstrators

had followed the directions of the police about staying behind the barriers. The only exception to this was the person (Mark Thesius of Up and Out of Poverty), who had made an earlier attempt to cross the barricade. (See Paragraphs 10-11.)

18. At the time Sgt. Chaplin hit me in the chest, President Bush was not anywhere in the area. A decoy limousine had been parked behind a garage door across Grant Street from me and the other demonstrators. The President did not use this limousine. In fact, the President and the others in his group left the Hyatt Hotel in the presidential motorcade using a completely different exit which could not be seen from the place where the demonstration was occurring.

19. Sgt. Chaplin aimed for and hit me directly in the sternum, close to my heart. I was standing still at the time he hit me, as the WCCO video shows.

20. Sgt. Chaplin's blow caused me a very serious and painful injury. I received medical treatment for it from Dr. Virant. He diagnosed my injury as a sternal contusion, involving a bruise to the sternum and damage to cartilage and other soft tissues in my chest.

21. My injury has also caused soft tissue injuries to my neck and spine. Dr. Virant has advised me these were caused as a result of my body making adjustments following the injury to my chest.

22. A true and accurate copy of a report prepared by Dr. Virant is attached as Exhibit A.

23. I also experienced emotional trauma caused by Sgt. Chaplin's attack, which required treatment by Dr.

Stanley Rosenthal. A true and accurate copy of a report prepared by Dr. Rosenthal regarding his treatment of me is attached as Exhibit B.

24. Neither Sgt. Chaplin nor any other police officer was attempting to arrest me when Sgt. Chaplin hit me. I was not resisting arrest, nor was I attempting to flee from any police officer. As the WCCO videotape shows, I was standing still and was not making any kind of threatening moves towards Sgt. Chaplin or any other police officer.

/s/ Janine Anne Baker
Janine Anne Baker

Subscribed and sworn to before me
this 13th day of April, 1992.

/s/ Roderick J. Macpherson, III
Notary Public

(SEAL)

CASE TYPE: DECLARATORY JUDGMENT/
INJUNCTION/CONTRACT

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF HENNEPIN — FOURTH JUDICIAL DISTRICT

MINNEAPOLIS POLICE OFFICERS FEDERATION, a non-profit corporation; and WILLIAM CHAPLIN,

Plaintiffs,

vs.

CITY OF MINNEAPOLIS, a municipal corporation,

Defendant.

Court File No.

AFFIDAVIT OF SERGEANT WILLIAM CHAPLIN

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

Sergeant William Chaplin, being first duly sworn, on oath states as follows:

1. I am a police officer employed by the City of Minneapolis and a resident of the City of Minneapolis, Hennepin County, Minnesota. I am also a member of the Police Officer's Federation of Minneapolis.

2. On September 27, 1990, I and other officers were assigned and ordered to provide security and protection for President Bush during his appearance at the Hyatt

Regency Hotel in downtown Minneapolis. Many protestors had gathered at the hotel on the morning of September 27, 1990 to protest the United States military presence in the Persian Gulf region, among other things.

3. Prior to the arrival of the President, I and other officers attended various training exercises relating generally to strategy and tactics for protecting dignitaries and specifically to the security plan for protecting President Bush.

4. In accordance with the security plan, police barricades were erected in order to maintain a secure area surrounding the hotel on the morning of September 27, 1990.

5. The collective demeanor of the protestors deteriorated to the point at which it was determined that a security risk existed. For that reason, the route by which the President departed the hotel was changed. Nevertheless, I and the other officers were obligated to maintain the secure area.

6. One protestor dressed in a business suit and wearing a rubber mask of the likeness of President Bush knocked over the barricade and crossed into the security area. Consistent with the training I was given and with the plan for protecting President Bush, I took prompt action to diffuse the threat. I struck the encroaching protestor by applying a trained maneuver in which the officer strikes the subject in the chest with a baton.

7. My use of force was subsequently investigated by the Internal Affairs Division of the Police Department.

Following the investigation, I was exonerated from any wrongdoing.

8. On January 4, 1991, the City of Minneapolis, acting through Chief Laux, rejected the Internal Affairs finding and commenced a disciplinary proceeding against me on the grounds that the use of force was not justified.

9. I have appealed the disciplinary action and the matter is proceeding toward arbitration.

10. Upon information and belief, Peter Ginder, Assistant City Attorney, is representing the City of Minneapolis in prosecuting its disciplinary action against me.

11. Upon information and belief, on or about August 23, 1991, Mr. Ginder received a letter from Roderick J. MacPherson, a Minneapolis attorney representing Jeanine Anne Baker, the protestor who I struck on September 27, 1990. In the letter, MacPherson stated that he had been directed to commence a lawsuit against me and the City of Minneapolis for injuries allegedly sustained by Ms. Baker on September 27, 1990. Enclosed with the letter was a draft of a Summons and Complaint naming me and the City of Minneapolis as co-defendants. The letter further indicated that if the City did not settle the matter within 30 days, the lawsuit would be filed.

12. On or about September 16, 1991, I wrote to Chief Laux and Robert Alfton, the City Attorney, to advise them that, because of the disciplinary action which had been commenced against me by the City, there was obvious conflict of interest which precluded joint representation of the City and me in the lawsuit threatened by Ms. Baker. Accordingly, I requested in the letter that the

City acknowledge its obligation to provide me with counsel under Article 18 of the Labor Agreement, allow me to choose counsel, and agree to pay the costs of my counsel.

13. Despite my request for representation, the City has failed and refused to acknowledge the existence of a conflict precluding joint representation or its obligation to pay for a separate attorney to represent only me.

14. On Friday, October 11, 1991, I was served with a Summons and Complaint in the Hennepin County District Court action entitled "Jeanine Anne Baker, plaintiff v. William Chaplin, individually and in his official capacity as a Minneapolis police officer; and City of Minneapolis, defendants." The period in which I am required to answer or otherwise respond to the Complaint expires on Thursday, October 31, 1991.

15. I cannot afford to hire an attorney to defend me in this action. Therefore, I will suffer immediate, irreparable harm if the City does not honor its obligation under statute and Article 18 of the Labor Agreement to provide me with legal representation and pay the costs of such representation.

FURTHER YOUR AFFIANT SAYETH NAUGHT

Date: 10/22/91 /s/ William Chaplin
William Chaplin

Subscribed and sworn to (SEAL)
before me
this 22nd day of October, 1991.

/s/ James P. Michels
Notary Public